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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ARARAT YESAYAN, Defendant.	No. CR-15-0234-CRB **DEFENDANT YESAYAN'S OBJECTION TO INCLUSION IN GROUP ONE TRIAL; MOTION TO SEVER**

I. Introduction

The Government maintains that Mr. Yesayan, who is a bit player in this complex, multi-defendant, multi-conspiracy case, belongs in a trial with the "Financial Crimes" Group, or "Group One," which by virtue of the other co-defendants assigned to this group, will encompass every count in the Indictment, including inflammatory allegations of murder-for-hire. Joint Memorandum Re Trial Groupings and Trial Setting at 2, CR 715. The Group One trial will likely necessitate weeks of evidence regarding intricate financial schemes with significant losses, a drug conspiracy, and a crime of violence all wholly unrelated to the Government's allegations against Mr. Yesayan. *See* Group One Charge Chart (attached hereto as Exhibit A). Given that Mr. Yesayan is named in merely two of the twenty-three counts in the Indictment, that the crux of his alleged misconduct is identity theft with no attendant loss, and that the scant mention of Mr. Yesayan in the Indictment confirms the minor nature of his participation in the crimes alleged, Mr. Yesayan asks this Court to find that his placement in this trial group is improper and to sever his trial from Group One.

II. Analysis

On October 7, 2015, the Government filed a Complaint against Mr. Yesayan alleging that there was probable cause to believe him guilty of crimes related to the conspiratorial schemes set forth in the original Indictment in this matter that was then pending against 33 defendants. The Complaint included identity theft, bank fraud, selling of unlicensed wholesale drugs, conspiracy, and money laundering charges. CR 1 (Indictment filed April 28, 2015); *see also* Criminal Complaint, 3-15-71311-EDL (hereinafter "Complaint"). According to the Complaint, Mr. Yesayan opened post office boxes using false identities that were then used to establish corresponding bank accounts. Complaint ¶¶ 10-27. These bank accounts were allegedly used to facilitate a money laundering conspiracy. *Id*.

On February 11, 2016, the Government filed a 23-count superseding indictment adding Mr. Yesayan and four others to the already bloated indictment. *See* Second Superseding Indictment (hereinafter "Indictment"). CR 502. Mr. Yesayan, Defendant 37 of 38,[1] was charged in only two counts: conspiracy to commit identity theft under 18 U.S.C. § 1028(f), and conspiracy to commit mail, wire, and bank fraud under 18 U.S.C. § 1349. Indictment ¶¶ 35-39, 47-51. Apart from boilerplate charging language, Mr. Yesayan's conduct is described in a single sentence of the forty-five-page Indictment: "Mirhan Stepanyan and Artur Stepanyan used false identities and their associated bank accounts, established by Ararat Yesayan and Artin Sarkissians, to launder approximately $32,571,853 from GC National Wholesale." Indictment ¶ 26. The allegations and charges against Mr. Yesayan in the Indictment are tellingly narrower than the broad claims in the

[1] 34 defendants remain in the case after the Court dismissed the charges against four defendants.

Complaint: there is no indication that Mr. Yesayan knew what the bank accounts were intended to be used for, and he is not charged in connection with the money laundering scheme.[2] *See* Indictment ¶¶ 52-54. In fact, the Indictment does not allege that Mr. Yesayan was involved in any activity that caused or resulted in the financial loss in which all other Financial Crimes Group co-defendants are implicated. *See* Indictment ¶ 26; *see also* Exhibit A.[3] No other defendants in Group One are similarly situated to Mr. Yesayan and he will suffer for standing trial with alleged co-conspirators accused of far more egregious conduct.

Under Federal Rule of Criminal Procedure 14, if joinder of defendants in "a consolidation for trial appears to prejudice a defendant," the court may sever the defendants' trials. Fed. R. Crim. P. 14. "Rule 14's concern is to provide the trial court with some flexibility when a joint trial may appear to risk prejudice to a party." *United States v. Lane*, 474 U.S. 438, 449 n. 12 (1986). "The granting or denial of a [severance motion] under [Rule 14] is a matter within the trial court's

[2] The Government cannot now indict Mr. Yesayan under the money laundering statute to cure the deficiencies in the bank fraud charges (footnote 3, *infra)* without running afoul of the Speedy Trial Act's timeliness requirement. 18 U.S.C. § 3162(a)(1) ("If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit [imposed under the Speedy Trial Act] . . . such charge against that individual contained in such complaint shall be dismissed or otherwise dropped."); *United States v. Palomba*, 31 F.3d 1456, 1464 (9th Cir. 1994) (holding that charges brought against the defendant in the superseding indictment had to be dismissed because they charged defendant "in an untimely manner with an offense which was contained in the complaint but which was not preserved against Section 3162(a)(1) dismissal . . . by inclusion in the timely original indictment)."

[3] Mr. Yesayan believes he has a viable challenge to the conspiracy to commit bank fraud charge (Count Four) because absent an intent to obtain bank property, or property under the bank's control, his alleged conduct in simply establishing bank accounts using false identification documents is insufficient to satisfy the statutory elements of the offense. Under 18 U.S.C. § 1344(a)(1) a defendant is guilty of bank fraud if he has the intent to defraud a financial institution. *United States v. Shaw*, 781 F. 3d 1130, 1134 (9th Cir. 2015) *cert. granted*, 136 S. Ct. 1711 (2016) (citing *Loughrin v. United States*, 134 S. Ct. 2384, 2389-92 (2014)). The Ninth Circuit has upheld convictions under § 1344(a)(1) when a defendant has deceived the bank for the purpose of obtaining its property even if it is ultimately a third party who bears the loss. *See, e.g., id.* at 1135-36 (stating "the bank is defrauded within the meaning of § 1344(1) when it is the target of the deceit, even if the scheme targeted the bank customer's accounts as the source of the money."). Under 18 U.S. C. § 1344(a)(2), a defendant is guilty of bank fraud if he deceives a third party with the intent of obtaining "moneys . . . or other property owned by, or under the custody or control of, a financial institution." *Loughrin*, 134 S. Ct. at 2389. The Government alleges that Mr. Yesayan established bank accounts using false identities, but does not allege that he did so with any intent to defraud the bank or to obtain its property or property under its control by virtue of making misrepresentations to third parties. *See* Indictment ¶ 26. Moreover, there was no actual loss to the bank here.

discretion . . . .” *United States v. Doe*, 655 F.2d 920, 926 (9th Cir. 1980) (citing *United States v. Campanale*, 518 F.2d 352, 359 (9th Cir. 1975)). In order for a defendant to establish that he will be prejudiced by joinder, he “must demonstrate that a joint trial is ‘so manifestly prejudicial that it outweighs the dominant concern with judicial economy and compels the exercise of the court’s discretion to sever.’” *Id*. (citing *United States v. Brashier*, 548 F.2d 1315, 1323 (9th Cir. 1976)).

In assessing whether the defendant has satisfied this burden, “of foremost importance is whether the evidence as it relates to the individual defendants is easily compartmentalized.” *United States v. Vasquez-Velasco*, 15 F.3d 833, 846 (9th Cir. 1994). The Ninth Circuit has generally held that “[t]he prejudicial effect of evidence relating to the guilt of codefendants is . . . neutralized by careful instruction by the trial judge,” and “assumes that the jury listen[s] to and follow[s] the trial judge’s instructions.” *United States v. Escalante*, 637 F.2d 1197, 1201-02 (9th Cir. 1980). However, where “the charges brought against the defendants or the weight of the evidence supporting each charge is wholly disparate or disproportionate,” this Circuit has stated that severance may be necessary. *Vasquez-Velasco*, 15 F.3d at 846. For example, the *Vasquez-Velasco* Court recognized that a defendant would likely be prejudiced when the bulk of the testimony presented to the jury concerned assassination charges unrelated to the defendant and where the testimony was gruesome. *Id.* (citing *United States v. Sampol,* 636 F.2d 621, 642-51 (D.C. Cir. 1980)). The *Vasquez-Velasco* Court also stated that a jury could not be expected to compartmentalize evidence in a case where only 50 of the more than 2300 pages of trial transcript concerned the defendant. *Id.* (citing *United States v. Donaway*, 447 F.2d 940, 943 (9th Cir. 1971)); *See also Zafiro v. United States*, 506 U.S. 534, 539 (1993) (“[w]hen many defendants are tried together in a complex case and they have markedly different degrees of culpability, [the] risk of prejudice [from joinder] is heightened.”).

A jury will not be able to easily parse out the minimal evidence against Mr. Yesayan from the reams of documentary proof and witness testimony presented against his Group One co-defendants. The single reference to Mr. Yesayan in the Indictment demonstrates that the Government has already conflated his limited role in allegedly using false identities to establish bank accounts with the money laundering scheme in which he is not charged. Despite the absence of any allegations that Mr. Yesayan's conduct caused any financial harm, if tried in the Financial Crimes group the same jury determining his innocence or guilt would also hear evidence of a greater than $35 million money laundering scheme designed to conceal the ill-gotten gains of a pharmaceutical conspiracy unrelated to Mr. Yesayan, as well as a murder-for-hire in which he undoubtedly played no part. Mr. Yesayan's risk of prejudice in a joint trial with the Financial Crimes group thus exceeds the risk defendants inherently face in multi-defendant cases, *cf. United States v. Ford*, 632 F.2d 1354, 1373 (9th Cir. 1980) (overruled on other grounds by *United States v. DeBright*, 730 F.2d 1255 (9 Cir. 1984)).

Concerns of judicial economy further militate towards severance. At a separate trial against Mr. Yesayan, the Government could streamline its case dramatically and would not have to re-present reams of prejudicial evidence relating to conspiratorial schemes and murderous plots that have no bearing on the allegations against Mr. Yesayan.

III. CONCLUSION

For all these reasons, Mr. Yesayan asserts that he cannot be fairly tried in Group One and therefore requests that the Court sever his trial.

Respectfully Submitted,

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/s/ *Miranda Kane*

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